

Page 518	Page 520
<p>1 litigation concerning the applicability 2 of and injunction similar to the Asbestos 3 Insurance Entity Injunction in any other 4 case? 5 MR. WISLER: Can you repeat 6 that? I didn't hear you, Dan. 7 BY MR. COHN: 8 Q. Are you aware of any 9 litigation concerning the scope of the 10 asbestos or an injunction similar to the 11 Asbestos Insurance Entity Injunction in 12 any other case? 13 A. The only litigation that I 14 am aware of that's remotely similar -- 15 and I don't profess to know all the 16 litigation that might be floating around 17 out there -- is actually litigation over 18 an entity that is closer to the Asbestos 19 Permanent Channelling Injunction. And 20 it's the Travelers injunction that's 21 presently before the United States 22 Supreme Court. To be more specific, it's 23 the Manville injunction that Travelers is 24 litigating about.</p>	<p>1 asbestos personal injury claims against 2 or arising out of Grace is something that 3 has to be channelled to the Trust because 4 it fits within the definition of an 5 asbestos personal injury claim under 6 524(g), and that in order that Grace be 7 protected from such indemnity claims, the 8 roughly \$3 billion that Grace and various 9 related parties are paying to this Plan 10 is, in part, on behalf of those settled 11 insurers 12 So if the question means, is 13 Maryland Casualty Company paying 14 something over and above what Grace is 15 paying, the answer is not to my 16 knowledge 17 Q. Is there a benefit to the 18 Grace Bankruptcy Estate or to the 19 Asbestos PI Trust from having the 20 Asbestos PI Channelling Injunction 21 protect Maryland Casualty Company? 22 MR. FINCH: Object to that 23 question to the extent that it 24 calls for speculation</p>
Page 519	Page 521
<p>1 Q. Has Maryland Casualty 2 Company paid or agreed to pay any money 3 or other consideration in order to be 4 covered by the Asbestos PI Channelling 5 Injunction? 6 A. Well, that depends on how 7 you use the term "pay." 8 The basis, which I take it 9 which is what you are asking for, for 10 Maryland Casualty being a protected party 11 to this Plan is that in the past, 12 Maryland Casualty Company has paid a lot 13 of money to Grace and entered into a 14 settlement agreement with Grace which 15 releases that coverage and which Grace 16 indemnifies it against claims. 17 As I testified, I believe, 18 on Friday, Grace, as part of this deal, 19 Grace has had two positions that it has 20 taken that we have -- we being the 21 committee and its representative -- 22 accepted. Number one is a claim for 23 indemnity from a settled insurer based on 24 claims against that insurer that are</p>	<p>1 Mr. Wisler: Could you read 2 the question back, please? 3 MR. SCHIAVONI: Objection to 4 form; objection, calls for waiver; 5 objection, calls for legal 6 conclusion. 7 MR. FINCH: I disagree that 8 it calls for waiver. 9 But you can answer. 10 THE WITNESS: Could you 11 reread the question? 12 MR. COHN: Let's go off the 13 record for a second. 14 (There was a discussion held 15 off the record at this time.) 16 (The reporter read from the 17 record as requested.) 18 Mr. Wisler: I object to 19 form. 20 THE WITNESS: Yes. 21 BY MR. COHN: 22 Q. What is that benefit? 23 MR. FINCH: You can answer 24 the question to the extent that it</p>

20 (Pages 522 to 525)

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<p>1 doesn't reveal privileged or work  2 product information.  3 <b>THE WITNESS: The benefit to</b>  4 <b>the Grace Estate is that it</b>  5 <b>eliminates potential claims by</b>  6 <b>Maryland Casualty Company against</b>  7 <b>the Debtor and its Estate. That's</b>  8 <b>the benefit.</b>  9 BY MR. COHN:  10 <b>Q. Is there any agreement</b>  11 <b>between Grace and Maryland Casualty</b>  12 <b>Company which requires Grace to indemnify</b>  13 <b>Maryland Casualty Company for its own</b>  14 <b>misconduct?</b>  15 MR. FINCH: Objection to the  16 extent that calls for a legal  17 opinion. And object to the extent  18 that there is information  19 responsive to this question that's  20 privileged, I instruct you not to  21 answer if it would reveal  22 privileged communications.  23 If you can answer the  24 question without revealing</p>	<p>1 Mr. Schiavoni for Arrowood.  2 We join your objection, and we  3 would also say this is outside the  4 scope of the designation and that  5 Mr. Lockwood doesn't have to  6 answer every single question no  7 matter what it is. This is not in  8 the designation.  9 MR. FINCH: Can we hear back  10 the question?  11 (The reporter read from the  12 record as requested.)  13 THE WITNESS: In my  14 understanding, there is an  15 agreement between Grace and  16 Maryland casualty company which  17 contains indemnification  18 provisions. I am not in a  19 position to express an opinion on  20 what the scope of that  21 indemnification is, much less  22 whether or not Grace and Maryland  23 Casualty agree on what the scope  24 of that indemnification is.</p>
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<p>1 privileged communications, you can  2 do so --  3 MR. SCHIAVONI:  4 Mr. Lockwood, I think --  5 MR. FINCH: Tank, let me  6 finish.  7 MR. SCHIAVONI: Oh, I am  8 sorry.  9 MR. FINCH: But I still  10 object to the extent that it calls  11 for a legal opinion.  12 MS. BAIER: I also object.  13 You have asked Mr. Lockwood  14 whether he knows about -- you  15 haven't asked him about whether he  16 knows. You asked him is there an  17 agreement between Grace and  18 Maryland Casualty Company. I  19 object to the form. You are now  20 asking Mr. Lockwood to get into  21 the head of W.R. Grace.  22 MR. SCHIAVONI: I am sorry,  23 Mr. Finch. I didn't mean to  24 interrupt you before.</p>	<p>1 BY MR. COHN:  2 <b>Q. Is it the position of the</b>  3 <b>Asbestos PI Committee that if the</b>  4 <b>indemnification provisions are construed</b>  5 <b>to protect Maryland Casualty from its own</b>  6 <b>misconduct, that such provisions would be</b>  7 <b>enforceable?</b>  8 MR. FINCH: Object to form,  9 calls for a legal conclusion.  10 THE WITNESS: It actually  11 calls for speculation.  12 MR. FINCH: That, too.  13 THE WITNESS: In addition.  14 The committee's  15 understanding of the way this Plan  16 works, which is what expresses the  17 committee's position, is that it's  18 a legal question which, assuming  19 that a dispute on this subject  20 arises at some point in the  21 future, will be determined by  22 litigation over, A, what exactly  23 is the basis for the claim against  24 Maryland Casualty, legal and</p>



27 (Pages 550 to 553)

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1 Linda Casey. I am with Pepper Hamilton.  
 2 I represent BNSF Railway Corporation.  
 3 Mr. Lockwood, are you aware  
 4 that BNSF asserts that Grace purchased  
 5 insurance policies that named BNSF as the  
 6 at that name insurer upon which Grace was  
 7 not also a named insured?

8 MR. FINCH: Object to form,  
 9 foundation.

10 THE WITNESS: I believe I  
 11 recall seeing Grace make such an  
 12 assertion.

13 MS. BAIER: Objection.

14 THE WITNESS: I am not sure,  
 15 frankly, however, whether it was  
 16 Grace that made the assertion or  
 17 BNSF made the assertion. I know  
 18 somebody has made the assertion.

19 BY MS. CASEY:

20 Q. Okay. The follow-up  
 21 question I have on that is, is it the  
 22 ACC's position that as to settled  
 23 insurance companies, settled asbestos  
 24 insurance companies, to the extent that

1 THE WITNESS: As I hear the  
 2 question and as I interpret the  
 3 Plan, an insurance policy  
 4 purchased by Grace for BNSF, which  
 5 did not provide coverage to Grace,  
 6 only provided coverage to BNSF.  
 7 claims by BNSF would not be  
 8 enjoined unless Grace had somehow  
 9 or another indemnified that  
 10 settled insurer against claims by  
 11 BNSF.

12 And then in that  
 13 hypothetical situation, since I  
 14 haven't seen the policies and have  
 15 no idea what, if any,  
 16 indemnifications they have in  
 17 them, there might be a situation  
 18 in which if the claim by BNSF  
 19 against that policy was an  
 20 asbestos personal injury claim and  
 21 Grace had indemnified that insurer  
 22 against that claim, then under  
 23 those circumstances, as I  
 24 understand the Plan, that claim

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1 they had, in fact, issued policies to be  
 2 in BNSF where BNSF is the named insurer,  
 3 that the channelling injunction will  
 4 enjoin BNSF post-confirmation from  
 5 asserting coverage claims against the  
 6 settled asbestos insurance company under  
 7 those policies?

8 MR. FINCH: Objection -

9 MS. BAIER: Objection to  
 10 form.

11 MR. PERNICONE: Objection.

12 MR. FINCH: -- form.

13 speculation.

14 To the extent you can  
 15 answer the question without  
 16 revealing privileged  
 17 communications or work product,  
 18 you can do so.

19 MR. SCHIAVONI: This is  
 20 Schiavoni. I object to form, and  
 21 I also object to this being  
 22 outside the scope of the  
 23 designation, and calling for a  
 24 legal conclusion.

1 might well be channelled to the  
 2 Trust. But, as I said before, I  
 3 have no idea whether any such  
 4 indemnification provision exists  
 5 or not.

6 BY MS. CASEY:

7 Q. I am not sure if I  
 8 understand your answer.

9 The claim that BNSF would  
 10 have against the insurer would be  
 11 channelled or the claim the insurer would  
 12 have against Grace for indemnification  
 13 would be channelled, or both?

14 MS. BAIER: Objection as to  
 15 form. It's a hypothetical,  
 16 speculative question.

17 MR. SCHIAVONI: Also, I  
 18 think it calls for speculation  
 19 given the nature of the answer  
 20 that was given.

21 THE WITNESS: Well, it  
 22 clearly calls for speculation.  
 23 The answer is, in theory,  
 24 both, in reality, only the first.

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28 (Pages 554 to 557)

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1 as my colloquy with Mr. Brown on  
2 Friday, I believe, expressed,  
3 which is that if the claim were,  
4 in fact, an asbestos personal  
5 injury claim that was indemnified  
6 by Grace, then the claim by BNSF  
7 against the insurer would be  
8 enjoined.

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9 Once the claim is enjoined,  
10 there will be no opportunity for  
11 the insurer to in turn. Have an  
12 indemnity claim against Grace.  
13 If the claim is somehow or  
14 another not enjoined, then it  
15 wouldn't be channelled to the  
16 Trust because the only basis on  
17 which it could not be enjoined was  
18 that it was not an asbestos  
19 personal injury claim in the first  
20 place. And the Trust picks up  
21 indemnity liabilities with respect  
22 to Grace for claims that arise out  
23 of asbestos personal injury  
24 claims.

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1 scenario, but I cannot flatly say  
2 that there is no conceivable  
3 combination of facts that might  
4 preclude that result from taking  
5 place.

6 BNSF is suing, by  
7 hypothesis, for coverage of a  
8 claim against BNSF. What is that  
9 claim? If somehow or another that  
10 claim fell within the definition  
11 of asbestos personal injury claim,  
12 as defined in the Plan, which I  
13 don't know whether it would or  
14 wouldn't, but theoretically it  
15 might, and if BNSF were held  
16 liable on that asbestos personal  
17 injury claim, brought a suit  
18 against that insurer on the  
19 separate policy, the insurer  
20 somehow or another produces what  
21 seems to me to be highly unlikely,  
22 which is an indemnity from Grace,  
23 saying that not only did we  
24 purchase this insurance policy for

AR's OBJ:

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1 But, again, I have no idea  
2 what kind of claims we are talking  
3 about here, so this is purely at a  
4 theoretical level of how the Plan  
5 would work on unspecified facts  
6 and unspecified contractual  
7 undertakings.

8 BY MS. CASEY:

9 Q. Let me ask it a different  
10 way then.

11 Is it the ACC's position  
12 that the Plan under any circumstances can  
13 enjoin BNSF from asserting its contract  
14 rights against the insurers where Grace  
15 purchased the policy but has not been a  
16 beneficiary under the policy?

17 MR. FINCH: Objection, form.

18 MS. DeCRISTOFARO: Objection  
19 to form.

20 MR. SCHIAVONI: Objection to  
21 form, calls for a legal

22 conclusion, calls for speculation.

23 THE WITNESS: It is very  
24 hard for me to imagine that

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1 BNSF's benefit but we gave the  
2 insurer an indemnity that it would  
3 never have to pay any money on the  
4 policy, then it's possible that  
5 that claim could wind up being  
6 enjoined because it gave rise to  
7 an indemnity or would give rise to  
8 an indemnity claim against Grace  
9 for an asbestos personal injury  
10 claim.

11 The problem is it is so  
12 inconceivable to me that Grace  
13 could give an indemnity to an  
14 insurer for a policy that didn't  
15 cover Grace but was purchased for  
16 BNSF and which hypothesis had  
17 never been exhausted. I can't  
18 imagine how that could come about.

19 So you are forcing me, when  
20 you give me these hypotheticals,  
21 to dream up scenarios under which  
22 the hypothetical might possibly  
23 apply, no matter how unrealistic  
24 the scenario appears to me to be.

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29 (Pages 558 to 561)

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1 And that scenario to me appears to  
2 be extraordinarily unrealistic, if  
3 not impossible.

4 BY MS. CASEY:

5 Q. I would like you to turn to  
6 Exhibit ACC Exhibit-11.

7 MR. FINCH: The TDP?

8 MS. CASEY: Yes, the TDP.

9 THE WITNESS: Okay. I have  
10 it.

11 BY MS. CASEY:

12 Q. And specifically 5.12.

13 A. I have it.

14 Q. Okay. 5.12 by its terms  
15 applies to claims that BNSF and others  
16 would have against settled asbestos  
17 insurance companies. Let me ask an  
18 initial question.

19 It is the ACC's position  
20 that the Asbestos Insurance Entity  
21 Injunction also enjoins asbestos claims  
22 as defined by the Plan from being  
23 asserted against unsettled asbestos  
24 insurance companies, correct?

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1 A. In general, that's true.  
2 The language is very specific as to what  
3 kind of claims that it enjoins against  
4 non-settled insurers, but subject to the  
5 caveat that you have to look at the  
6 definition to know exactly which kind of  
7 claims you are talking about, yes.

8 Q. Does the TDP have a  
9 provision by which BNSF Railway can  
10 assert its enjoined claims against the  
11 unsettled asbestos insurance companies?

12 MR. SCHIAVONI: Objection to  
13 form.

14 THE WITNESS: At the moment,  
15 I can't think of anything.

16 BY MS. CASEY:

17 Q. Okay. My final questions  
18 concern the contribution that Grace is  
19 allegedly providing to the Plan on behalf  
20 of the insurance companies for the  
21 benefit of the 524(g) injunction.

22 I understand the cash  
23 portion -- at least I understand the  
24 argument that the ACC is present

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1 regarding cash portion. I am not sure I  
2 understand the basis for saying that the  
3 channelling of the indemnification claims  
4 constitutes a substantial contribution to  
5 the Plan or a benefit to the Plan, to the  
6 asbestos claimants.

7 Can you explain how that  
8 constitutes a benefit?

9 MR. FINCH: Objection,  
10 mischaracterizes prior testimony.

11 THE WITNESS: I don't  
12 believe I testified that that was  
13 a benefit to the Trust.

14 The channelling of the  
15 claims, the indemnity claims,  
16 against Grace, I testified was a  
17 benefit to the Grace Estate.

18 The statute, in general,  
19 says that a protected party has to  
20 have something contributed on its  
21 behalf to the Trust in exchange  
22 for the injunction. That's a very  
23 broad paraphrase to the statute.

24 So the protection for the

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1 settled insurance company is the  
2 injunction. The benefit to the  
3 Trust, which if it, in effect,  
4 purchases that protection, is the  
5 Grace contribution, which Grace is  
6 making on behalf of itself and  
7 multiple other entities.

8 BY MS. CASEY:

9 Q. The cash contribution?

10 A. Well, the entirety of the  
11 contribution. There is cash; there is  
12 notes; there is warrant; there is  
13 insurance; and there is the Grace  
14 Estate's claim against Fresenius and  
15 Sealed Air.

16 You will recall that  
17 Fresenius and -- the committee -- the two  
18 committees, the PI and the PD committees,  
19 brought claims against Sealed Air and  
20 Fresenius on behalf of the Grace Estate.  
21 So when those claims were settled, they  
22 were not only settled by the entities  
23 against which they were brought, namely,  
24 Sealed Air and Fresenius, but, to the

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1 extent that the proceeds of those  
2 settlements wind up in the Grace Trust as  
3 opposed to the Grace Estate for  
4 distribution to other people, they are a  
5 settlement part of Grace's contribution  
6 to the Trust.

7 **Q. Has the ACC attempted to**  
8 **apportion or value those portions of the**  
9 **contributions made by Grace that are upon**  
10 **Grace's behalf versus upon the insurer's**  
11 **behalf?**

12 **MR. FINCH: You can answer**  
13 **that yes or no.**

14 **THE WITNESS: Well, I will**  
15 **answer it no and add I am not sure**  
16 **how anybody could go about doing**  
17 **that. It's what is known as a**  
18 **lump sum deal.**

19 MS. CASEY: I have no  
20 further questions.

21 MR. SCHIAVONI: Actually,  
22 could we let Mr. Speights from  
23 South Carolina go first.

24 MR. FINCH: You are up, Dan.

1 MR. FINCH: Objection,  
2 foundation.

3 BY MR. SPEIGHTS:

4 **Q. Yes, you personally.**

5 A. No.

6 **Q. Was your law firm?**

7 MR. FINCH: Objection, form,  
8 foundation, relevance.

9 THE WITNESS: It depends on  
10 how you define negotiations when  
11 it comes to dealing with a  
12 congressional enactment. My  
13 partner, Mr. Inselbuch, to my  
14 knowledge, had at least one  
15 meeting with Senator Heflin on the  
16 subject of the statute.

17 What other discussions,  
18 either in committee or outside  
19 committee or whatever,  
20 Mr. Inselbuch might have been  
21 involved with, I really don't  
22 know. But he's being deposed on  
23 June 12th, and I guess you could  
24 ask him.

1 - - -  
2 EXAMINATION  
3 - - -

4 BY MR. SPEIGHTS:

5 **Q. Mr. Lockwood, were you**  
6 **involved in the negotiation of the 524 --**  
7 **strike that.**

8 **Were you involved in the --**

9 MS. BAIER: Dan, can you  
10 speak up or come closer to the  
11 phone or something?

12 THE WITNESS: Nobody can  
13 hear you.

14 MR. SPEIGHTS: I picked up  
15 the phone. I am not on speaker.

16 MR. FINCH: Now we can hear  
17 you.

18 THE WITNESS: That's better.

19 MR. FINCH: That's better.

20 BY MR. SPEIGHTS:

21 **Q. Let me start over again.**  
22 **Mr. Lockwood, were you involved in the**  
23 **negotiation of the 524(g) statute?**

24 A. Me personally?

1 BY MR. SPEIGHTS:

2 **Q. Would you agree with me that**  
3 **the 524(g) statute always refers to the**  
4 **word "Trust" in singular rather than**  
5 **plural?**

6 A. I would have to go back and  
7 look at the statute to be sure of that.  
8 If you tell me it does, I am not going to  
9 argue with you about it.

10 **Q. Well, I am actually not**  
11 **going to tell you anything. But if you**  
12 **don't recall without looking at the**  
13 **statute, I certainly would accept that**  
14 **answer.**

15 A. I do not specifically recall  
16 without looking at the statute.

17 **Q. Do you recall any bankruptcy**  
18 **that was contested and provides for two**  
19 **asbestos trusts, two or more asbestos**  
20 **trusts?**

21 A. Do you mean a bankruptcy  
22 where the Plan proposed to create two  
23 trusts, and somebody said there could  
24 only be one and that was the contest and



48 (Pages 634 to 637)

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1 the same position and give the  
2 same instruction.

3 If you ask about questions  
4 that Libby claimants have taken in  
5 papers filed in the court, for  
6 example, in a Disclosure Statement  
7 objections and the bullet point  
8 Plan objections and the  
9 committee's responses made to that  
10 in open court, I will permit  
11 Mr. Lockwood certainly to answer  
12 those questions.

13 But anything that gets into  
14 communications with between the  
15 Libby claimants with the rest of  
16 the ACC or counsel for the ACC  
17 about their respective views of  
18 insurance coverage, I am going to  
19 take the position as privileged.

20 And so I think you have to  
21 do it on a question-by-question  
22 basis, but that's my general  
23 position.

24 BY MR. SCHIAVONI:

1 you have follow-up until we run  
2 out of time.

3 (There was a discussion held  
4 off the record at this time.)

5 (There was a break from 3:55  
6 p.m. to 4:03 p.m.)

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. BROWN:

11 Q. Mr. Lockwood, just a couple  
12 of follow-ups. The court reporter is  
13 actually going to read back a question  
14 and answer. I think it's probably easier  
15 to do that, and then I will ask my  
16 follow-up question. It was end of  
17 Mr. Wisler's questioning of you.

18 A. Okay.

19 (The reporter read from the  
20 record as requested.)

21 BY MR. BROWN:

22 Q. And after that,  
23 Mr. Lockwood, Mr. Wisler asked you a  
24 follow-up as to what type of claim it

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1 Q. Okay. Mr. Lockwood, I just  
2 have one other brief topic. And here is  
3 the first question on that: Does the  
4 Plan purport to release claims that may  
5 exist between insurers and Non-Debtors?

6 MR. FINCH: Objection, form,  
7 broad, vague.

8 THE WITNESS: Phrased as  
9 broadly as you have, I think the  
10 answer is yes.

11 MR. SCHIAVONI: Okay. Thank  
12 you. I have no further questions.

13 MR. FINCH: Is there anyone  
14 else in the room who has  
15 questions?

16 MR. BROWN: I have some  
17 follow-ups.

18 MR. FINCH: Is there anyone  
19 else on the telephone who has not  
20 asked questions yet who has  
21 questions?

22 (No response.)

23 MR. FINCH: Hearing no  
24 affirmative response, I will let

1 would be.

2 And is it correct that the  
3 ACC does not have a position on what type  
4 of claim it would be if it's not a Class  
5 6 claim?

6 A. Well, the ACC doesn't, as  
7 such, have positions on hypothetical  
8 questions. So, yes, the ACC doesn't have  
9 a position on that issue. The ACC --  
10 well, I will leave it at that.

11 Q. On Friday, Mr. Cohn asked  
12 you a question, who drafted the TDP.  
13 That was the question, and you gave an  
14 answer which I am happy to show you the  
15 full answer. But I WANT to repeat a  
16 portion of your answer. You said: "The  
17 participants that did it were basically  
18 counsel for the ACC, counsel for the FCR,  
19 and members of the ACC itself in terms of  
20 reviewing and commenting on things, and  
21 the FCR himself."

22 When you said the ACC  
23 itself, what did you mean?

24 A. I meant --